United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 18-1390**
	)	**Issued: April 1, 2019**
DEPARTMENT OF VETERANS AFFAIRS, S.S. STRATTON VETERANS MEDICAL CENTER, Albany, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 9, 2018 appellant filed a timely appeal from a May 1, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted March 28, 2017 employment incident.

FACTUAL HISTORY

On April 7, 2017 appellant, then a 53-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that, on March 28, 2017, he injured his low back when he experienced

[1] 5 U.S.C. § 8101 *et seq.*

unexpected dead weight when transferring a patient from a lounger to a wheelchair, while in the performance of duty. He stopped work on March 28, 2017.

In a report dated March 28, 2017, Dr. Gene Pellerin, an osteopath Board-certified in emergency medicine, noted the history of appellant's March 28, 2017 employment incident, his symptoms, and provided a diagnosis of a "strain."

Appellant also provided a series of notes from Dr. Claude D. Guerra, a chiropractor. In the March 29, 2017 initial examination report, Dr. Guerra noted the history of appellant's injury and presented examination findings, which included lumbar and cervical spasm and abnormal/ restricted range of motion in the lumbar and cervical areas. With checkmark notations, he indicated that appellant's history of injury was consistent with his objective findings. Dr. Guerra also opined that appellant was temporary totally disabled due to severe pain, spasms, and restricted lumbar and cervical range of motion. He continued to opine, in his other chiropractic notes, that appellant was temporarily totally disabled. No diagnostic tests or referrals were recommended.

OWCP also received an April 6, 2017 excuse note from an emergency department, which appeared to be signed by a physician assistant, which held appellant off work through April 11, 2017; and an April 12, 2017 note from a nurse practitioner, which indicated that appellant was off work on March 28, 2017 for back pain and that he remained off work from April 11 through May 12, 2017.

In an April 24, 2017 note, Dr. Patrick Coleman, a family practitioner, reported that appellant was injured at work on March 28, 2017 and that he had not improved despite frequent chiropractic treatments. He noted that appellant was scheduled for a magnetic resonance imaging (MRI) scan.

By development letter dated April 27, 2017, OWCP advised appellant that further medical evidence was necessary to establish that a diagnosed medical condition was causally related to the alleged employment incident. It noted that the medical evidence submitted must be from a qualified physician and notified him of the circumstances under which a chiropractor can be considered a physician under FECA. OWCP afforded appellant 30 days to submit the necessary evidence.

In an April 6, 2017 report, Dr. Sirus A. Kermani, a Board-certified emergency room physician, reported that appellant had injured his back while shoveling about a month prior and had reinjured his back while moving a patient at work last week. He diagnosed back pain.

OWCP thereafter received chiropractic treatment notes from Dr. Guerra dated April 14, 16, 18, 21, and 24, 2017, which indicated that appellant was temporarily totally disabled. In an April 28, 2017 chiropractic note, Dr. Guerra noted that appellant was to return to work on May 2, 2017 without restrictions.

In a May 3, 2017 attending physician's report (Form CA-20), Dr. Coleman diagnosed low back pain with sciatica which he opined was work related as appellant's pain began after lifting a patient at work. He noted that both plain x-rays on April 12, 2017 and the MRI scan on April 26, 2017 showed mild degenerative changes at L4-5 and L5-S1.

By decision dated June 1, 2017, OWCP accepted that the March 28, 2017 incident occurred as alleged. However, it denied the claim finding that the medical evidence of record was insufficient to establish that appellant's diagnosed back conditions were causally related to the accepted March 28, 2017 employment incident.

OWCP thereafter received an undated statement from appellant, which noted his activities following the March 28, 2017 injury, and physical therapy reports dated May 3 and 8, 2017.

In a June 19, 2017 report, Dr. Luke V. Rigolosi, a Board-certified physiatrist, noted the history of the March 28, 2017 employment injury, that appellant was out of work from March 28 to May 8, 2017, and that he had been treated by a chiropractor. He provided an impression of history of work-related back injury with lumbar sprain/strain, currently resolved.

On February 1, 2018 appellant requested reconsideration.

By decision dated May 1, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[6] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

[2] *Id.*

[3] *See J.R.*, Docket No. 18-1079 (issued January 15, 2019); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *See J.R., id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *See J.R., supra* note 3; *B.F.*, Docket No. 09-0060 (issued March 17, 2009).

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[8] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted March 28, 2017 employment incident.

Dr. Pellerin provided March 28, 2017 treatment notes which reported the history of appellant's March 28, 2017 employment incident and diagnosed a "strain." While it can be deduced from the report that the strain refers to appellant's back, there is no opinion or discussion as to whether appellant's employment activity on March 28, 2017 caused the strain. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] Therefore, this report is insufficient to establish the claim.

Appellant's chiropractor, Dr. Guerra, treated appellant from March 29, 2017. However, he failed to obtain x-rays or provide a diagnosis of appellant's medical condition. Chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] Findings and/or opinions of chiropractors which are not based on x-ray evidence of subluxation will not suffice for purposes of establishing entitlement to FECA benefits.[12] Dr. Guerra's reports are therefore of no probative medical value.

Dr. Kermani, in his April 6, 2017 report, noted that appellant had injured his back while shoveling a month prior and reinjured his back while moving a patient at work the prior week. He provided a diagnosis of back pain. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[13]

[8] *J.P.*, Docket No. 18-1165 (issued January 15, 2019).

[9] *M.L.*, Docket No. 17-1026 (issued April 20, 2018).

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] 5 U.S.C. § 8101(2); *see A.L.*, Docket No. 18-0420 (issued August 21, 2018); *T.W.*, Docket No. 17-1819 (issued March 14, 2018); *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[12] *See A.R.*, Docket No. 18-1126 (issued December 7, 2018); *A.L.*, *supra* note 11; *R.M.*, Docket No. 17-1656 (issued January 16, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[13] *See L.M.*, Docket No. 18-0473 (issued October 22, 2018); *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

Dr. Coleman, in his May 4, 2017 report, noted appellant's history of injury and provided a valid medical diagnosis of sciatica. He also indicated that the April 2017 x-rays and MRI scan report showed mild degenerative changes at L4-5 and L5-S1. However, Dr. Coleman failed to provide a well-reasoned medical opinion supported by objective findings as to how the March 28, 2017 employment incident either directly caused or aggravated the diagnosed medical condition of sciatica.[14] In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[15] As he failed to do so, his report is insufficient to establish appellant's claim.

Dr. Rigolosi, in his June 19, 2017 report, noted the history of the March 28, 2017 employment injury. While he opined that appellant had a work-related back injury with lumbar sprain/strain, currently resolved, he failed to provide a medical explanation of how the diagnosed resolved lumbar sprain/strain physiologically resulted from the accepted March 28, 2017 work incident. Absent an explanation, Dr. Rigolosi's report is insufficient to establish causal relationship.[16]

The record also includes physical therapy notes, an April 6, 2017 physician assistant note, and an April 12, 2017 note from a nurse practitioner. The Board has held that reports from physical therapists, physician assistants, and nurse practitioners lack probative value as those health care providers are not considered physicians under FECA.[17] Consequently, this evidence is insufficient to establish appellant's claim.[18]

As the record does not contain rationalized medical evidence establishing causal relationship between the accepted March 28, 2017 employment incident and appellant's back conditions, the Board finds that appellant has not met his burden of proof.[19]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[14] *See S.H.*, Docket No. 17-1524 (issued December 21, 2017).

[15] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[16] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] *See A.M.*, Docket No. 18-0542 (issued November 1, 2018); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[19] *See T.M.*, Docket No. 18-0972 (issued December 13, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted March 28, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board